As regards sentence, in my view this was as bad and as bold a case of stealing produce as any that has been brought to the notice of this Court in recent times. Thefts of coconuts from plantations in this particular district, and elsewhere, in this state are reported to be widespread, to be on the increase, and to be causing grave concern to estate owners and to the authorities. Everybody knows how difficult it is to catch the thieves, and there can be not the smallest room for doubt that this evil must be stamped out and, if it is necessary, by heavy prison sentences. In the circumstances of this case, I do not consider a sentence of four months' imprisonment to be in the lease bit excessive and, if the accused was over 21 years old, I would not interfere with this sentence.

However, as I stated earlier, the accused is at most 18 years old — he is said to look very much younger — and he is furthermore a first offender. It has been stressed by this Court that it is very desirable that young offenders, that is, offenders between the ages of 17 and 21 years, who are also first offenders, should be kept out of prison, if possible. The Magistrate does not appear to have taken this into consideration at all. I consider that it would be more beneficial to the accused, and in the long run to the community at large, to send him to an advanced approved school rather than to prison, and I therefore quash the sentence of four months' imprisonment and order that the accused be committed for three years to the Henry Gurney School at Telok Mas.

The case presents an occasion to make the following remarks. Firstly, as far back as 1932 it was laid down by the Court of Appeal that it is the duty of a trial Judge before passing sentence to record some evidence in a criminal case where the accused pleads guilty (See *Palan v. Public Prosecutor*[1]). Since that case the attention of Magistrates has frequently been directed by Judges of the Supreme Court to the importance of observing this practice (See *Public Prosecutor v. Nahat Singh*[2]; *Public Prosecutor v. Chean Tin*[3]). In *Chin Ban Keat v. Rex*[4], Jobling J. went to the trouble of giving directions as to whether evidence should be led as to the facts alleged or if they should be merely stated by the prosecuting officer. He said, at page 298 :—

"This is a matter of practice which must be left to the presiding Magistrate. The aim of the Court is to record the facts alleged by the Prosecutor and admitted by the accused and to satisfy itself that they constitute the offence charged."

"In most cases this can be satisfactorily achieved by a statement by the Prosecuting Officer followed by an admission by the accused but in cases of doubt or difficulty it may be advisable to have evidence led as to the facts. The course adopted in each case must be left to the Court's discretion."

Every Magistrate should know by this time what his duty is in this connection. In the present case, no record was made by the Magistrate of the facts, with the result that this Court was obliged to obtain the assistance of the Deputy Public Prosecutor to ascertain what the facts relied upon by the Prosecution were, whether those facts had been stated to the trial Magistrate by the Prosecuting officer, and whether the accused had admitted such facts. These inquiries involved much labour and a considerable loss of time which would have been avoided if the Magistrate had recorded the facts, and also whether the accused admitted them, as he was required to do. I have set out the relevant authorities in the hope that Magistrates will read and note them so that this will not occur again.

Secondly, before passing sentence Magistrates should first make careful inquiries "regarding the background, antecedents and character" of the convicted person, (See *Abu Bakar bin Alif v. R.*[5]), and this is particularly of importance when the convicted person is a young offender and it is contemplated imposing a sentence of imprisonment. A probation officer's report should always be called for, and a Magistrate should not hesitate to adjourn the case in order to obtain such a report before passing sentence. Inexperienced Magistrates sometimes are in doubt as to the proper manner of bringing in such a report. The probation officer should be called as a witness and give the substance of this report in evidence. (See *Ong Ah Thoo v. Rex*[6]).

Order accordingly.

Re SIM THONG LAI

[O.C.J. (Taylor J.) January 14, 1955]

[Singapore—Adoption Petition No. 41 of 1953]

Adoption of Children Ordinance, 1939, s. 10 — Chinese custom — Customary gift of "ginger and cake" money — Whether an unlawful consideration — Sanction of Court.

This petition was an application to legalise an adoption which *de facto* had already been completed. The petitioners and the natural parents were all working people and the child was not entitled to any property. A Social Welfare Officer who had investigated the case on behalf of the Attorney-General, as guardian of the infant *ad litem*, reported that there had been no monetary transaction regarding the adoption except that the petitioners gave to the natural parents a red packet containing $200, a few yards of cloth and two bottles of wine, as a customary gift.

The natural and adopting mothers testified that when the adoption was agreed, the child being about five weeks old, it was agreed that the adopters should pay $200 to cover the confinement expenses and the maintenance of the child up to the date of transfer of custody. In amplification of this evidence the Secretary for Chinese Affairs, in his affidavit, said, *inter alia*. "It is rather a token of compensation to the parents for the

expenses incurred in bearing and rearing the child up to the time of adoption....in some cases the payment is referred to as such in the document, or else as "ginger and cake" money, that is to say money to pay for the medicaments and nourishments taken by the mother at the time of childbirth."

Held: (1) a reward in consideration of a statutory adoption is unlawful, unless sanctioned by the Court and the sanction cannot be given after the event; (2) bare reimbursement and maintenance expenses does not amount to an unlawful reward but such cases require strict scrutiny.

Cases referred to:—

(1) *In re Gallard* (1896) 1 Q.B. 68.

(2) *In re London Metallurgical Co.* (1897) 2 Ch. 262.

(3) *In re Yorke* (1911) 1 Ch. 370.

ADOPTION PETITION.

K. K. Bezboruah for the petitioners.

G. S. Hill (Crown Counsel) for the Attorney-General.

Taylor J.: —This was a petition by a Chinese married couple for an order under the Adoption of Children Ordinance, 1939, authorising them to adopt a male infant about five months old. The natural parents consented. The child had been in the actual care and custody of the petitioners since he was four months old. The petition was in truth an application to legalise an adoption which *de facto* had already been completed. The petitioners and the natural parents were all working people and the child was not entitled to any property. A Social Welfare Officer who had investigated the case on behalf of the Attorney-General, as guardian of the infant *ad litem*, reported that there had been no monetary transaction regarding the adoption except that the petitioners gave to the natural parents a red packet containing $200, a few yards of cloth and two bottles of wine, as a customary gift.

Section 10 of the Ordinance is as follows:—

"It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the Court to receive any payment or other reward in consideration of the adoption of any infant under this Ordinance or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward."

The matter was adjourned for argument on the questions whether the $200 was an unlawful consideration, unless sanctioned, and whether the sanction could be given after the event.

On the latter point counsel for the Attorney-General, cited three cases, *In re Gallard*[1], *In re London Metallurgical Co.*[2] and *In re Yorke*[3]. All these refer to legal costs and in none of them was there any question of what had been done being unlawful; the question was whether admittedly lawful expenditure could be recouped from a trust fund. In *Gallard's*[1] *case* the Court of Appeal held on the construction of the particular statute there in question, that sanction could not be given after the costs had been incurred. The *Metallurgical Co.'s*[2] *case* is to the same effect; the section there requiring in terms that sanction must be obtained before hand except in cases of urgency. In *Yorke's*[3] *case* payment of part of the costs was sanctioned after the event, but the section there applied dealt with costs "incurred or to be incurred." It is clear that the question whether sanction can be given after the event depends on the wording of the particular statutory provision and that such provisions are construed strictly.

In my opinion the words of section 10, ". . . . not lawful . . . . except with the sanction of the Court . . . . to receive" are clear. In the absence of sanction the receipt of a reward is unlawful. The section does not empower the Court to make lawful what was unlawful at the time.

There is, however, a difference between section 10 and section 4. Section 10 makes it unlawful for either the adopter or the natural parent to receive an unsanctioned reward. Section 4 requires the Court to be satisfied that the adopter has not received an unsanctioned reward but does not mention the parent. From this it was argued that the receipt of an unlawful reward by the natural parent is not an absolute bar to the adoption even though the adopter has given the reward. It may not be an absolute bar but it would only be in very exceptional circumstances that the Court would condone a payment which is declared by statute to be unlawful.

Counsel also drew attention to the Children and Young Persons Ordinance, 1949, where trafficking in children is dealt with more explicitly. Section 26 makes it a criminal offence to transfer a child for valuable consideration except in the case of *bona fide* adoption. It was argued that it would be anomalous if a payment which was lawful when made were to become unlawful afterwards solely because legal proceedings were instituted. This argument is unsound. The statutes are separate. The words "illegal" and "unlawful" have slightly different connotations in different contexts.

In my opinion the true position is shortly this. Adoption of children is an ancient and widespread institution among many communities, both Asian and European, which has always been recognised as a matter of social practice or customary law, but it is only in very recent times that it has been in any way regulated by statute and the present legislative control

is partial, not comprehensive. The present phase may be consciously transitional.

Trafficking in children is an abuse which has been made a statutory crime, and must not be masked by the outward forms of adoption. Hence the transfer of a child for reward is now, *prima facie* a crime but the presumption may be rebutted by proof that the transaction was a genuine adoption. A reward in consideration of a genuine adoption is not illegal in the sense of being prohibited under penalty. The Children Ordinance appears to tolerate a reward which is an incident of a *bona fide* customary adoption. The Ordinance of 1939 does not abolish or prohibit customary or informal adoption. It provides a mode of legalising adoptions and registering them and it defines their legal effect as to inheritance and the like but it is optional and not comprehensive. The law relating to marriage is in a comparable state; unregistered customary forms of marriage are still recognised as valid and binding but there is (though only since 1940) an optional form of registered Civil Marriage.

The Ordinance of 1939 declares that rewards in consideration of legal adoption are unlawful. This provision must have its full effect. The fact that rewards in consideration of customary adoption are not prohibited is beside the point.

The argument of Counsel in this case really amounted to the contention that an adopter can have the best of both worlds — that he can give a reward to the natural parent, obtain actual transfer of the child and then come to Court and say: — The reward was only for the informal or customary adoption. I now apply to legalise the adoption, as I may properly do, the reward not being referable to the legal proceeding. This contention, if successful would evade or defeat section 10. If the applicants relied solely on customary adoption they already had all they required. If they want an Order under the Ordinance they must comply with the whole of the Ordinance and, in particular, with section 10. Refusal of their application would not involve any hardship. It would not reverse the transaction or invalidate or in any way prejudice the *de facto* and lawful customary adoption.

The argument that the two transactions are severable might prevail in some circumstances. For instance a child might have been adopted long ago, before the Ordinance was well known, and without any reference to it and the adopters might later desire to legalise the position. Such an application might succeed. But the facts of this case are different.

The adopters had daughters but no son and like many people, particularly Chinese, for religious reasons they wanted a son and arranged to adopt the child now in question very soon after he was born. They took him into their home as soon as he could reasonably be weaned and forthwith applied to the Court. The plain and obvious inference is that from the first they intended a legal adoption under the Ordinance, and that the gifts were part of the transaction.

The gifts in kind, and even money if it were a merely nominal sum, may fairly be regarded as tokens or customary or courtesy gifts but in relation to the means of these parties $200 is a substantial amount and if it were given in consideration of the adoption, without sanction it is unlawful. It is therefore necessary to ascertain the true nature of the payment. Further evidence was adduced. The natural and adopting mothers testified that when the adoption was arranged, the child being then about five weeks old, it was agreed that the adopters should pay $200 to cover the confinement expenses and the maintenance of the child up to the date of transfer of custody. In amplification of this evidence the Secretary for Chinese Affairs, Mr. R. N. Broome, who has much experience of Chinese family matters and has seen many adoption documents, swore an affidavit which is of general interest and value. The main paragraph reads:—

> "It is extremely unwise to be dogmatic about Chinese custom, particularly in Malaya. But in my opinion a genuine Chinese adoption is rarely considered correctly completed, except where the adopters are near relatives of the natural parents, unless there is a payment of money by the adopters to the natural parents. It is not sufficient for there to be token payment in the sense of a small coin wrapped in red paper. The payment is normally substantial, and may be up to $200 or more. I do not think this payment is regarded as a purchase price. It is rather a token of compensation to the parents for the expenses incurred in bearing and rearing the child up to the time of adoption. Indeed in some cases the payment is referred to as such in the document, or else as "ginger and cake" money, that is to say, money to pay for the medicaments and nourishments taken by the mother at the time of childbirth. I think that the reason for this custom might be that the adopting parents can consider the adopted child more truly their own if they can claim to have paid for its maintenance from birth."

This evidence refers to adoptions according to Chinese family custom and has no direct bearing on statutory adoptions under the Ordinance. The parties, however, do not in their own minds sever the two proceedings. From their point of view the transaction is all one. One woman says to the other — Will you let me adopt your baby? The other replies: — "Yes — subject to the usual ginger and cake money."

This is not equivalent to saying: — "You can have him for $200." But it is equivalent to saying: — "Not

unless you recoup his expenses, which I estimate at $200."

The real question in the case is whether such recoupment amounts, in the words of the statute, to "A reward in consideration of the adoption." In one sense the money was certainly paid in consideration of the adoption; without the payment the natural parents would not have agreed to transfer their child. But that is not to say that the adoption was for reward in the sense which the Ordinance seeks to make unlawful. A middle view is possible.

The case could be compared with one where the custody of a child is transferred temporarily, as for instance where he is sent to another country for education. The parents might put him in the care of a relative who would maintain him gratuitously. They might send him to a relative, less fortunately circumstanced, who accepted money representing the bare cost of maintenance. They might send him to a some kind of a boarding establishment avowedly on a commercial basis; this would obviously involve reward, though the amount would be only a proportion of the money paid. In the second example the host might fairly say that mere reimbursement did not mean that he was accepting money for his services and that he was in truth taking care of the child without reward. The present case appears to be similar in principle.

Every such case requires strict scrutiny because the sum of money could so easily be inflated to mask an unlawful reward, but in view of the further evidence I saw no reason to suppose that has occurred in this instance so the petition was granted.

Petition granted.

Solicitor for the petitioners: *K. K. Bezboruah.*

LIAN TECK CHEW v. REGINA

[C.C.A. (Murray-Aynsley C.J., Mathew C.J. (F.M.) and Brown J.) January 13, 1955]

[Singapore—Criminal Appeal No. 24 of 1954]

Prevention of Corruption Ordinance, 1937, s. 3(b) — Police conniving in commission of offences in order to detect other offences — Whether Police Officer becomes an accomplice — Investigation carried on by Corrupt Practices Investigation Bureau — Criminal Procedure Code (Cap. 21), s. 125 — Dangerous Drugs Ordinance, 1951, s. 48.

This was an appeal against the conviction of the appellant on a charge under s. 3 (b) of the Prevention of Corruption Ordinance, 1937. There was evidence to show that at the suggestion of the appellant Mr. Waters, an Acting Deputy Superintendent of the Harbour Board Police, on three occasions carried chandu from the Harbour Board area and on each occasion was subsequently given a sum of money. One of the grounds of appeal was that Mr. Waters was an accomplice, as apart from the protection afforded by s. 48 of the Dangerous Drugs Ordinance an offence would have been committed by him.

Held: Mr. Waters was not an accomplice and since the first suggestion came from the appellant he was not an agent provocateur.

CRIMINAL APPEAL.

N. L. Macassey for the appellant.

T. A. Mahoney (Crown Counsel) for the respondent.

Murray-Aynsley C.J. (delivering the judgment of the Court): — In this case there was abundant evidence that at the suggestion of the appellant Mr. Waters, Acting Deputy Superintendent of the Harbour Board Police, on three occasions carried chandu from the Harbour Board area and on each occasion was subsequently given a sum of money. The appellant was charged under the Prevention of Corruption Ordinance though he might have been charged under the Penal Code. The charge was as follows: —

"That you, Lian Teck Chew, on or about the 17th day of August, 1953, at or about 3.30 p.m. at No. 27 Eng Hoon Street, Singapore, did corruptly give the sum of cash $900 to an agent, namely Ray William Waters, Acting Deputy Superintendent, Harbour Board Police, as a reward to the said Ray William Waters for forbearing to do an act in relation to his principal's affairs, viz. for forbearing to take action against yourself and Yong Weng and Tan Yee Leong in the matter of jointly with the said Yong Weng and Tan Yee Leong, importing into the Colony of Singapore 32 lbs. of opium contrary to the Dangerous Drugs Ordinance and thereby committed an offence punishable under section 3 (b) of the Prevention of Corruption Ordinance, 1937 (No. 41 of 1937)."

in the first case and in the same form for the other two.

Giving money to carry the chandu would not have been an offence against the Ordinance although what the appellant sought was to get the chandu conveyed, the carriage of the chandu by Mr. Waters and its delivery to the associates of the appellant involved — besides the positive act in question, various negative acts, refraining from taking measures against persons in possession of chandu. We think that the charge is good.

A great stress was laid on behalf of the appellant on the fact that apart from the protection afforded by section 48 of the Dangerous Drugs Ordinance (No. 7 of 1951) an offence would have been committed by Mr. Waters. Certainly a considerable amount of chandu found its way to the market as the result of his action. Mr. Waters was not an accomplice and, since the first suggestion came from the appellant, he was not what is called as "agent provocateur". It is unfortunately true that certain offences can only be detected by action of this kind by the police and their agents, extending in some cases so far as the commission